Supreme Court, U.S.
FILED
NOV 7 1996
CLERK

No. 96-61

In The Supreme Court Of The United States

OCTOBER TERM 1996

SHAWN PAUL NOVAK,

Petitioner,

V.

COMMONWEALTH OF VIRGINIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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ARGUMENT IN REPLY

1. The argument concerning the exclusion of the child's mother from the police interrogation of her son.

On pages 5, 6 and 12 of his Brief in Opposition, respondent addresses petitioner's due process argument regarding the exclusion of Mrs. Novak from the interrogation of her son. Respondent argues as if this were a passive act on the part of the authorities in failing to notify the mother rather than the active employment of deceit and manipulation by an agent of the state, Detective Hoffman, in excluding the child's mother from the police interrogation. Mrs. Novak told Detective Hoffman that she wanted to be present and, indeed, was present at the beginning of the interrogation of her son but was later deceived by Hoffman into leaving. The distinction is between merely failing to notify a parent and actively lying to a mother in order to deliberately exclude her. It is this refusal by Detective Hoffman to recognize the right of a juvenile to have his parent present, as expressed to him on behalf of the juvenile by the parent, that violates the child's fundamental right to due process of law and makes the resulting confession per se coercive. Whether or not he's in custody, once a juvenile has expressed to an agent of the state his right to have a parent present during a police interrogation, either directly by the juvenile or for the juvenile by his parent, then the state must recognize that right and not continue to actively manipulate and deceive both mother and son

in order to force a separation. This Court need look no farther than the actions of Detective Hoffman in separating mother from son in order to find police action unsupportable under fourteenth amendment due process.

This Court has long recognized the inherent strength of the parent-child bond:

> "The history and culture of western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

Wisconsin v. Yoder, 406 U.S. 205, 232 (1972).

Likewise, this court has recognized the right of a parent to speak and act on behalf of a minor child. In the landmark decision concerning juvenile rights, In Re Gault, 387 U.S. 1 (1966), the Court uses language suggesting a parent-child unit when discussing constitutional rights that might be invoked by either the juvenile or the parent on behalf of the juvenile:

> "This knowledge [that Mrs. Gault, the mother, could employ counsel for her son] is not a waiver of the right to employ counsel which she and her juvenile son had, as we have

> defined it. They had a right expressly to be advised that they might retain counsel and to be confronted with the need for specific consideration of whether they did or did not choose to waive the right. If they were unable to afford to employ counsel, they were entitled in view of the seriousness of the charge and the potential commitment, to appointed counsel, unless they chose waiver."
>
> Id. at 42

The logic behind recognizing the authority of a parent to exercise rights on behalf of a juvenile is self-evident: a threshold issue in a juvenile's exercising a constitutional right is the recognition by the juvenile that he possesses the right. The parent is the proper adult to assist and guide the child, and at times to act on behalf of the child, in the exercise of constitutional protections, just as the parent is recognized by law to be the proper adult to act on behalf of a juvenile in many other legal matters. Mrs. Novak, then, properly exercised her son's right to have her present at his police interrogation, a right not honored by Detective Hoffman.

Juveniles, by virtue of their tender years and limited life experience, occupy a unique status when it comes to constitutional protections. As the Court recognized in Haley v. Ohio, 322 U.S. 596 (1948), special care must be taken when a juvenile is confronted by the power of the

state during a police interrogation:

> "The age of the petitioner [15 years old], the hours when he was grilled, the duration of his quizzing, the fact that he had no friend or counsel to advise him, the callous attitude of the police towards his rights combine to convince us that this was a confession wrung from a child by means which the law should not sanction."
>
> Id., at 600-601.

The presence of a parent certainly does much to ensure the constitutionally-mandated protections of a juvenile confronted with a police interrogation, and levels the field somewhat between the individual and the powers of the state:

> "[The juvenile] cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admission. He would have no way of knowing what the consequences of his confession were without advice as to his rights - from someone concerned with securing him those rights - and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult

> advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had. To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights."

Gallegos v. Colorado, 370 U.S. 49 (1962).

In this case, the child had with him at the interrogation his mother, an adult present expressly for the purpose of making sure the child did receive the protections guaranteed to him by the United States Constitution. She would have asserted her son's constitutional rights on his behalf. (Petition, A148)[1]. When she was manipulated out of the interrogation room, the child's constitutional protections effectively left with her.

Certainly no other adult present or looking on showed any concern for ensuring petitioner's constitutional protections. In fact Detective Hoffman, incredibly insisting that petitioner was not a suspect, throughout the interrogation

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[1] Citations designated "Petition" are to pages of the Petition for Writ of Certiorari on file with this Court.

employed a variety of techniques to ensure that the child would neither recognize nor assert his constitutional rights. He consciously and purposely deceived the child by setting himself up as an adult that the child could trust and then using this position of trust to ensure that the child would neither acknowledge nor exercise his constitutional rights.

It is of critical importance in this case that, regardless of whether or not Miranda rights were constitutionally mandated at the beginning of this interrogation, no Miranda warnings were given the child until after his confession when, of course, any benefit to be gained by the child's exercise of his rights was minimal at best. The fact that Detective Hoffman chose not to inform the petitioner of his rights prior to his confession meant that the child had absolutely nothing to fall back on once his mother was manipulated out of the interrogation room. Had he received his Miranda rights earlier, an argument could be made that at least the child was aware of his constitutional rights. In this child's confrontation with the state, we have not even that minimal level of protection. We are left, then, with a reduction of substantive constitutional rights to meaningless formality, and "[f]ormulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law ...". Haley, supra, 322 U.S. at 601. As in Haley, this case presents a "...situation [that] was so contrived that

appreciation of [the child's] rights and thereby the means of asserting them were effectively withheld from him by the police ...". Id., at 607, Frankfurter, J., concurring.

Of all the cases discussing the meaning of an individual's rights against self-incrimination guaranteed by the United States Constitution, perhaps Gault still says it best:

> "The privilege against self-incrimination is, of course, related to the safeguards necessary to assure that admissions or confessions are reasonably trustworthy, that they are not the mere fruits of fear or coercion, but are reliable expressions of the truth. The roots of the privilege are, however, far deeper. They tap the basic stream of religious and political principle because the privilege reflects the limits of the individual's attornment to the state and - in a philosophical sense - insists upon the equality of the individual and the state. In other words, the privilege has a broader and deeper thrust than the rule which prevents the use of confessions which are the product of coercion because coercion is thought to carry with it the danger of unreliability. One of its purposes is to prevent the

> state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction."
>
> Gault, supra, 387 U.S. at 47.

If the noble promise of Gault is to have any meaning in a modern world, the police actions employed here cannot stand.

Finally, it is noteworthy that respondent does not rebut petitioner's claim that Virginia stands alone in finding a juvenile confession voluntary where the parent was deliberately excluded from the interrogation against the parent's will and absent a waiver. Respondent does make the unsupported allegation that Mrs. Novak voluntarily left the interrogation room. While this allegation may be true to the extent that the child's mother was not physically subdued and removed from the interrogation room, it is certainly misleading. The interrogation transcript and video tapes speak for themselves on the issue of Mrs. Novak's exclusion from her son's interrogation. Respondent's claims to the contrary notwithstanding, neither the trial court nor the Virginia Court of Appeals refuted the conclusion that Mrs. Novak's act of leaving the interrogation room was solely the result of Detective Hoffman's deceit and manipulation.

2. Potentially misleading conclusions and statements of fact.

Throughout his Brief in Opposition, respondent baldly and without authority misstates facts and draws misleading conclusions. Obfuscation is not an appropriate reply to this petition. Petitioner addresses two of the more egregious misstatements.

On page 6, Brief in Opposition, respondent states without authority that petitioner was a "street wise" sixteen-year-old who attempted to manipulate his contacts with the police to his advantage. On the contrary, petitioner had just turned 16 and lived at home with his parents (Petition, P. A133), attended public high school (Petition, P. A126), and had no previous contact with law enforcement authorities. (May 4, 1992 Trial Transcript P. 131, Joint Appendix on Appeal P. 1208). The record is devoid of any evidence that petitioner attempted to manipulate his interrogations by the police.

On page 7, Brief in Opposition, respondent misleadingly implies that Mrs. Novak knew Detective Hoffman was going to question her son about the crimes by stating that "...she admitted that Detective Hoffman told her before she left the interview room on March 9 that he wanted to get into some sensitive areas with her son, not just ask him about his friends ...". Again, this allegation is belied by the transcript of the interrogation - the transcript speaks for itself about what Detective Hoffman told

Mrs. Novak. (Petition pp. A60 - A63).

3. The error was not harmless

Respondent argues that error, if any, is harmless beyond a reasonable doubt. It is hard to imagine that any illegal confession could ever be harmless error beyond a reasonable doubt. Absent the confession, the only direct evidence linking petitioner to the crimes in this case was testimony that either petitioner's knife or one like it left a bloody imprint on one of the victim's clothing and was used to cut branches to cover the body. No other forensic evidence linked petitioner to the crimes, no fingerprints, no footprints, no blood or other trace evidence. The confession was crucial to the conviction. And finally trial prosecutor Robert J. Humphreys, presumably in the best position to judge the strengths and weaknesses of his own case, stated that "[w]ith no confession, there is no case. There's a lot of suspicious circumstantial evidence. Standing alone, it was not enough to convict."[2]

CONCLUSION

For the foregoing reasons and those set forth in his petition, petitioner submits that certiorari should be granted.

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[2] K. DeRochi, "Judge upholds police tactics in Novak Case," Virginian-Pilot (Norfolk, VA.), February 5, 1992 at A1.

Respectfully Submitted

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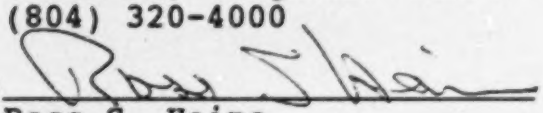
By: 
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November 6, 1996.

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